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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL BAZLEY,

Defendant and Appellant.

C087457

(Super. Ct. No. 17FE019829)

Defendant Michael Bazley accosted a Kohl's employee while trying to flee the store with unpaid merchandise. He pleaded no contest to attempted robbery in exchange for a stipulated two-year sentence in state prison and dismissal of the remaining charges.

Defendant's appointed counsel filed an opening brief setting forth the facts of the case and asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm defendant's conviction. We shall modify the judgment to impose the mandatory court

facilities assessment under Government Code section 70373. As so modified, we affirm the judgment.

BACKGROUND

We provide the following brief description of the facts and procedural history of defendant's case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On September 19, 2017, defendant attempted to exit a Kohl's store in Sacramento without paying for merchandise. After being intercepted by a store employee outside, he voluntarily returned to the store. Once inside, he tried to flee from another exit. The store's loss prevention officers pursued defendant, and he struck loss prevention officer L.A. in an attempt to escape from the store.

Defendant was charged with two counts of attempted robbery. It was alleged defendant had a prior serious felony conviction (Pen. Code, § 667, subds. (b)-(i))¹ from Louisiana² and had served seven prior prison terms (§ 667.5, subd. (b).)

On June 15, 2018, defendant pleaded no contest to one count of attempted burglary in exchange for a stipulated two-year prison term and dismissal of the remaining counts and allegations. The court sentenced defendant to serve the stipulated two-year term and dismissed the remaining charges. He was awarded 218 days of actual custody credit and 218 days of conduct credit for a total of 436 days of credit (§ 4019). The court did not award defendant credit for 10 days that the court stated constituted a period of flash incarceration.

The court imposed a \$600 restitution fine (§ 1202.4), and a \$600 parole revocation restitution fine, which was suspended unless parole was revoked (§ 1202.45). The court

¹ Undesignated statutory references are to the Penal Code.

² The Louisiana records were lost, possibly in Hurricane Katrina.

imposed a court security fee (§ 1465.8), but did not orally impose a mandatory court facilities assessment under Government Code section 70373.

Defendant timely appealed and requested a certificate of probable cause. The court denied his certificate request.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and requesting that this court review the record to determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief arguing the court erred in awarding him 218 days of custody credit rather than 228 days of credit. He contends that 228 days of credit was a term of the plea agreement, and his counsel erred by not pointing that out to the court.

Assuming a certificate of probable cause is not necessary to raise the above credit issue (*People v. Johnson* (2009) 47 Cal.4th 668, 677 [no certificate required where the defendant claims on appeal that the sentence imposed violated a plea agreement and does not challenge the validity of his guilty plea]), we conclude the record belies defendant's argument. While the record does not contain a written plea form, it does contain a minute order concerning the plea. (*People v. West* (1970) 3 Cal.3d 595, 610 (*West*) [terms of plea bargain may be set forth by the clerk in the minutes of the court].) According to the plea minute order, defendant agreed to plead no contest to count one, attempted robbery, in exchange for a stipulated term of two years and dismissal of the balance of the charges. Nowhere does the plea minute order indicate that he agreed to 228 days of custody credit as part of the plea deal.

Similarly, nothing during the plea hearing suggests 228 days of credit was an agreed upon term of the parties' plea agreement. (*West, supra*, 3 Cal.3d at p. 610 [terms

of plea bargain may be stated orally and recorded by the court reporter].) Indeed, when the court stated it would award defendant 218 days of credit, subtracting 10 days for an apparent period of flash incarceration, defendant did not object.

After examining the entire record, we conclude the trial court erred when it did not impose a mandatory \$30 court facilities assessment under Government Code section 70373 at sentencing. (Gov. Code, § 70373, subd. (a)(1).) We shall modify the judgment to impose the mandatory fee. Because the abstract of judgment already references a \$30 fee under Government Code section 70373, the abstract need not be amended.

DISPOSITION

Defendant's conviction is affirmed. The judgment is modified to include a mandatory \$30 court facilities assessment under Government Code section 70373. As so modified, the judgment is affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
HULL, Acting P. J.

_____/s/
MURRAY, J.